both Package Boilers, the Project's distributed control system, or any of the electrical transformers located in the Project's switchyard, with respect to breaches of provisions of this Agreement that cannot be performed, consistent with Prudent Operating Practices, without the equipment requiring replacement.

- b. Abandonment. Seller Abandons the Project after the Initial Delivery Date.
- c. Existence. Seller is dissolved, Seller's existence is terminated, or Seller's business is discontinued, unless this Agreement is assigned to a successor pursuant to Article VII, or unless a majority of the owners of Seller elect to continue the business of Seller under a successor company, and such company notifies Eastman of its intention to assume Seller's obligations under this Agreement within thirty (30) days of such dissolution, termination, or discontinuation.
- d. Misrepresentation. Any representation or warranty furnished by Seller in connection with this Agreement was false or misleading in any material respect when made, unless (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within thirty (30) days after Eastman has given notice thereof to Seller; provided, however, that if the fact, circumstance, or condition that is the subject of such representation or warranty cannot be corrected within such thirty (30) day period and if Seller within such period of thirty (30) days commences, and thereafter proceeds with all due diligence, to correct the fact, circumstance, or condition that is the subject of such representation, or warranty, such period shall be extended for such further period as shall be necessary for Seller to correct the same with all due diligence or one hundred eighty (180) days whichever is less, and (ii) such cure removes any adverse effect on Eastman of such fact, circumstance, or condition being otherwise than as first represented, or (iii) such fact, circumstance, or condition being otherwise than as first represented does not materially adversely affect Eastman.
- e. <u>Package Boiler Steam Delivery</u>. If, prior to the three hundred and sixty-fifth (365th) day after Eastman has delivered a Steam Demand Notice to Seller, Seller has failed, subject to any of the enumerated exceptions listed in Section 4.01(k), to resume operational control and responsibility for the Package Boilers and resumed delivery of Steam in accordance with the provisions of this Agreement, such failure by Seller shall be deemed an Event of Default effective on the three hundred and sixty-sixth (366th) day following delivery of the Steam Demand Notice; *provided, however*, that this Paragraph shall only become effective and binding upon the Parties on the date that Eastman certifies in writing to Seller that Eastman's Existing Steam Equipment has been permanently abandoned and is no longer capable of commercial operation.
- f. Natural Gas Delivery. If, prior to the three hundred and sixty-fifth (365th) day after Eastman has delivered a Gas Demand Notice to Seller, Seller has failed, subject to any of the enumerated exceptions listed in Section 5.12(a)(iii), to resume operational control and responsibility for the HTM Heater Pipeline and resume delivery of natural gas in accordance with the terms of this Agreement, such failure by Seller shall be deemed an Event of Default effective on the three hundred and sixty-sixth (366th) day following delivery of the Gas Demand Notice.

10.03 Remedies Upon Default by Eastman.

- a. Generally. Upon the occurrence of an Event of Default by Eastman, or if otherwise permitted under this Agreement, Seller may exercise any one or more of the following remedies:
- i. Exercise, in accordance with Section 10.06, all remedies available at law or at equity or other appropriate proceedings, including bringing an action or actions from time to time for recovery of amounts due and unpaid by Eastman, and/or for damages and expenses resulting from the Event of Default, which shall include all costs and expenses reasonably incurred in the exercise of its remedy (including reasonable attorneys' fees); provided, however, that the damages due to Eastman's failure to purchase or accept Steam shall be reduced by any additional electric revenue to Seller from the sale of electric power produced with Steam that Eastman failed to purchase.
- ii. Without recourse to legal process, terminate this Agreement by delivery of a written notice to Eastman declaring termination, without liability to Eastman or to its assigns, in which case Seller shall have the right to (i) dismantle and remove the Project in accordance with the terms of the Lease Agreement, or (ii) continue to own, operate, and maintain the Project and make sales of electric power and steam to any other purchaser, in which case Eastman shall (y) provide easements across unimproved portions of the Plant Site for any necessary electric power and Steam delivery facilities or any other purpose reasonably related to such sale, and (z) allow Seller to continue to use any existing easements and Eastman's Infrastructure required for operation of the Project under terms identical to those contained in Section 3.04(c).
- b. <u>Suspension</u>. In the case of a Default under Section 10.01(c) that continues for ten (10) days following receipt by Eastman of the notice specified in Section 10.01(c), immediately suspend delivery of electric power and Steam to Eastman until such Default is cured.
- c. Termination Fee. In the event this Agreement is terminated as a result of an Event of Default by Eastman prior to the expiration of the Term, Eastman shall pay Seller a termination fee equal to the sum of (i) the actual final, all-in cost of the HTM Financed Facilities (defined as HPA in Exhibit 4.03(a)) less the sum of all HC component payments of TPs (as defined in Exhibit 4.03(a)(I)(A)) made through the date of termination, and (ii) the amount of Seller's Lenders unamortized interest in the Package Boilers, including all ancillary equipment and utility connections that are necessary to generate and deliver Steam therefrom to the Plant (excluding any Essential Gas Facilities or other facilities that are necessary for the operation of the Project). Upon receipt of payment from Eastman of the termination fee set forth above, Seller shall transfer to Eastman (y) Seller's HTM Heater Interests and the Essential ISBL Facilities (excluding any Essential Gas Facilities) and (z) the Package Boilers, including all ancillary equipment and utility connections that are necessary to generate and deliver Steam therefrom to the Plant (excluding any Essential Gas Facilities or other facilities that are necessary for the operation of the Project).

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- 10.04 Remedies Upon Default by Seller. Upon the occurrence of an Event of Default by Seller, Eastman may exercise any one or more of the following remedies:
- a. <u>Generally</u>. Exercise, in accordance with Section 10.06, all remedies available at law or at equity or other appropriate proceedings, including bringing an action or actions from time to time for damages and expenses resulting from the Event of Default, which shall include all costs and expenses reasonably incurred in the exercise of its remedy (including reasonable attorneys' fees).
- b. <u>Termination</u>. Without recourse to legal process, terminate this Agreement by delivery of a written notice to Seller declaring termination, in which case Seller shall have the right to continue to occupy the Project Site pursuant to the Lease Agreement; provided, however, that upon such termination Seller shall commence payment of rent as provided in the Lease Agreement and operate the Project to produce electric power and steam for sale to other purchasers, and provided, further, that such production and sale does not unreasonably interfere with Eastman's operation of the Plant.
- c. <u>Limitation on Damages</u>. Notwithstanding the foregoing, in the case of an Event of Default under Section 10.02(a) based on Seller's failure to supply Steam, electric power, or natural gas hereunder, Eastman's damages shall be limited to the amount, if any, by which the cost of replacing the Steam, electric power or natural gas that Seller failed to deliver, exceeds the cost of an equivalent amount of Steam, electric power or natural gas under this Agreement.
- d. Purchase Option. In the event this Agreement is terminated as a result of an Event of Default by Seller prior to the expiration of the Term, Eastman shall have the option to purchase from Seller (i) Seller's HTM Heater Interests and the Essential ISBL Facilities (excluding any Essential Gas Facilities) at a price equal to the fair market value of the HTM Heater Financed Facilities, and (ii) the Package Boilers, including all ancillary equipment and utility connections that are necessary to generate and deliver Steam therefrom to the Plant (excluding any Essential Gas Facilities or other facilities that are necessary for the operation of the Project) at a price equal to the fair market value of the Package Boilers and such associated equipment. In each case, the fair market value shall be determined by the average of two (2) independent appraisals that reflect Seller's Lenders unamortized interest in the equipment, which, in the case of the equipment referred to in Subparagraph (i) shall be based on the actual, all-in cost of the HTM Financed Facilities (defined as HPA in Exhibit 4.03(a)), less the sum of all HC component payments of TPs (as defined in Exhibit 4.03(a)(1)(A)) made through the date of termination, adjusted by an appropriate discount factor.

10.05 Election of Remedies.

a. No Waiver. Except as specifically limited in this Agreement, each and every right, power, and remedy of a Party, whether specifically stated in this Agreement, or otherwise existing, may be exercised concurrently or separately, from time to time, and so often and in such order as may be deemed expedient by the exercising Party, and the exercise or the beginning of the exercise of any such right, power, or remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right, power, or remedy. No delay

or omission of a Party in the exercise of any right, power, or remedy shall impair or operate as a waiver thereof or of any other right, power, or remedy then or thereafter existing.

b. Effect of Cure. Notwithstanding any other provision of this Article, neither Party shall terminate this Agreement following the occurrence of an Event of Default by the other Party if, prior to the defaulting Party's receipt of a notice of such termination, and notwithstanding the expiration or unavailability of any cure period provided under this Agreement, the defaulting Party shall have cured the Event of Default.

10.06 Dispute Resolution.

a. General Provisions. Every dispute of any kind or nature between the Parties arising out of or in connection with this Agreement (each a "Dispute") shall be resolved in accordance with this Section, to the extent permitted by Law. The Parties shall use their best efforts to resolve every dispute of any kind or nature arising out of or in connection with this Agreement through the Operating Committee, or other appropriate means, prior to pursuing resolution in accordance with this Section.

b. Referral to Senior Management.

- i. Except as provided in Paragraph (c) below, upon the occurrence of a Dispute, either Party may deliver a notice to the other Party requesting that the Dispute be referred to the Senior Management of the Parties. Any such notice shall include the names of the Senior Management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the thirty (30) day period following the date of the notice. Any such notice shall be delivered within a reasonable time after the Dispute arises, but in any event before the institution of legal or equitable proceedings based on such Dispute would be barred by any applicable statute of limitations.
- ii. Within seven (7) days after receipt of a notice pursuant to Paragraph (i) of this Section, the other Party shall provide a notice to the requesting Party indicating the names of the Senior Management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the remainder of the thirty (30) day period following the date of the notice.
- iii. During the remainder of the thirty (30) day period following delivery of the notice, the nominated members of the Senior Management of the Parties shall meet as frequently as possible, and shall attempt in good faith to resolve the Dispute.

c. Technical Disputes.

i. In the event of a Dispute between the Parties that both Parties mutually agree in writing is a dispute of a technical nature (a "Technical Dispute"), and, within ten (10) days of such written agreement, the Parties mutually agree to the appointment of a technical expert with the qualifications set forth in Section 10.06(d)(iii) (the "Technical Expert"), the Technical Dispute shall be resolved as set forth below. The determination of the Technical Expert shall, except in the event of fraud, be final and binding upon the Parties.

- A. The Technical Expert shall be appointed on the condition that he render his decision with full reasons within thirty-five (35) days after the date of his appointment; that he promptly fixes a reasonable time and place for receiving representations, submissions, or information from the Parties, and that he issues directions to the Parties for the proper conduct of his determination and any hearing.
- B. The Parties undertake to provide the Technical Expert with all evidence and information within their respective possession or control as the Technical Expert may consider necessary for determining the Technical Dispute or that is relevant to and bears upon the matter to be determined, which the Parties shall mutually and promptly disclose.
- C. Each Party may appoint such lawyers, consultants, and advisers as it feels appropriate to assist the Technical Expert in his determination and to present their respective cases, provided that the Parties shall cooperate and seek to narrow and limit the issues to be determined.
- ii. Each Party shall bear the costs and expenses of all lawyers, consultants, advisers, and witnesses retained by it in any Technical Dispute referred to a Technical Expert. The Parties shall share the costs and expenses of the Technical Expert equally.

d. Arbitration.

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- i. Any Dispute that has not been resolved within thirty (30) days of the delivery of a notice in accordance with Section 10.06(b)(i), and that is not subject to resolution pursuant to Section 10.06(c), shall be submitted to arbitration pursuant to the procedures set forth in this Section and pursuant to the Arbitration Rules. If and to the extent that the provisions of this Section are inconsistent with the Arbitration Rules, the provisions of this Section shall control in any arbitration proceeding to the extent permitted by Law.
- ii. Either Party may make demand for arbitration in writing to the other Party, setting forth the nature of the Dispute, the amount involved, if any, and the remedies sought. The demand for arbitration may be made at any time after the expiration of the thirty (30) day period set forth in Section 10.06(b)(i), but in no event shall it be made when institution of legal or equitable proceedings based on such Dispute would be barred by any applicable statute of limitations.
- iii. Within ten (10) days after any demand for arbitration under Paragraph (b), the Parties shall agree on three (3) arbitrators. If the Parties are unable to agree to the appointment of the arbitrators, then the Parties shall request that the American Arbitration Association choose three (3) arbitrators each of whom meets the following criteria: (1) the person is reasonably recognized by both Parties as an expert in the field of expertise in which the Dispute arose; and (2) the person shall be an independent third party with no relationship whatsoever, past or current, to either Party and as such, shall not be an Associate of either Party (other than as a result of such appointment under this Agreement).
- iv. The arbitration hearing shall be held in Washington, DC or such other place as may be mutually agreed upon by the Parties, and shall commence not later than sixty

(60) days after the date of the original demand under Subparagraph (i). The award of the arbitrators shall be made not later than thirty (30) days after the date of closing of the hearing, or if oral hearings have been waived, after the date of transmitting the final statements and proof to the arbitrators.

- v. In the event the arbitrators find a breach of the terms and conditions of this Agreement to have occurred and be continuing, the arbitrators shall have express authority to order the payment of damages, subject to Section 9.03 hereof, to compensate the non-breaching Party for any loss. Any payment of damages ordered by the arbitrators shall bear interest at the Prime Rate, which interest shall accrue daily, from the date as of which such damages are calculated to the date on which the Party entitled thereto receives payment thereof in full. The award of the arbitrators shall be final, except as otherwise provided by applicable Law, and shall not be deemed to terminate this Agreement unless expressly provided in the award. Judgment upon such award may be entered on behalf of the prevailing Party in any court having jurisdiction thereof, and application may be made by such Party to any such court for judicial acceptance of such award and an order of enforcement.
- vi. The expenses of the arbitration, including attorneys' fees, shall be borne by the unsuccessful Party unless the arbitrator, by its award, shall otherwise provide.
- e. Continued Performance. During the conduct of dispute resolution procedures, whether pursuant to this Section 10.06 or otherwise, (i) the Parties shall continue to perform their respective obligations under this Agreement, and (ii) neither Party shall exercise any other remedies hereunder arising by virtue of the matters in dispute; provided, however, that nothing in this Section shall be construed to prevent Seller from suspending performance in the event that Eastman has not paid undisputed amounts due and owing to Seller within the time specified in Section 4.05(a) and the notice specified in Section 10.01(c) has been received by Eastman.
- 10.07 Effect of Termination. No termination of this Agreement following an Event of Default shall relieve the defaulting Party of its liability and obligations hereunder, and, subject to the provisions of Section 10.06, the non-defaulting Party may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligations under this Agreement, and the rights given hereunder shall be in addition to all other remedies available to the Parties, either, at law, in equity, or otherwise, for the breach of this Agreement.

ARTICLE XI INSURANCE

- 11.01 Coverage and Amounts. Seller and Eastman shall maintain insurance as provided in the Lease Agreement.
- 11.02 <u>Insurance Policies</u>. Seller and Eastman shall furnish certificates of insurance as provided in the Lease Agreement.

ARTICLE XII **MISCELLANEOUS**

12.01 Applicable Law. This Agreement is executed in accordance with and is intended to be construed under the Laws of the State of South Carolina, excluding any Law related to conflict or choice of Law that would result in the application of any Law to this Agreement other than the Laws of the State of South Carolina.

12.02 Notice and Service. Any notice, demand, request, consent, approval, confirmation, communication, or statement that is required or permitted under this Agreement. shall be in writing, except as otherwise provided, and shall be given or delivered by personal service, telecopy, telegram, Federal Express or comparable overnight delivery service, or by deposit in any United States Post Office, postage prepaid, by registered or certified mail, addressed to the Party at the address set forth below. Changes in such address shall be made by notice similarly given.

If to Eastman:

Eastman Chemical Company Carolina Operations P.O. Box 1782 Columbia, SC 29202

> Phone: 803-791-3082 Telefax: 803-791-3043 Attention: Manager, Utilities

With a copy to:

Eastman Chemical Company 200 South Wilcox Drive, B-280 Kingsport, TN 37660

Phone: 423-229-6505 Telefax: 423-224-0598

Attention: Vice President, Global Customer Supply Chain

If to Seller:

Columbia Energy LLC c/o SkyGen Energy LLC **Edens Corporate Center** 650 Dundee Road, Suite 350 Northbrook, Illinois 60062 Phone: 847-559-9800

Telefax: 847-559-1805 Attention: President

Notices shall be deemed to have been received, and shall be effective, upon receipt. Notices of changes of address by either Party shall be made in writing no later than ten (10) days prior to the effective date of such change.

12.03 <u>Amendment</u>. No amendment or modification of the terms of this Agreement shall be binding on either Eastman or Seller unless such amendment is reduced to writing and signed by both Parties.

12.04 Taxes and Other Charges.

- a. <u>Seller's Taxes</u>. Seller shall be solely responsible for any Tax relating to the construction, ownership, operation, or maintenance of the Project or its components or appurtenances. Eastman and Seller shall use their best efforts to restructure this Agreement or other agreements between the Parties pertaining to the Project to minimize Seller's Tax liabilities hereunder, *provided* that no such efforts shall adversely affect either Party's financial condition relative to this Agreement.
- b. Eastman's Taxes. Eastman shall be solely responsible for (i) any Tax imposed with respect to the purchase or sale of the Steam or electric power produced by the Project and delivered to Eastman or natural gas delivered into the HTM Heater Pipeline for consumption in the HTM Heater System (other than federal and state income Taxes imposed on Seller) and (ii) any Tax imposed with respect to the construction, ownership, operation, or maintenance of the HTM Heater System or it components or appurtenances. To the extent that Seller pays any such Tax, Eastman shall reimburse Seller for such Tax, and Seller shall include such payment as a separate line item in Seller's next monthly bill prepared pursuant to Section 4.04. Eastman and Seller shall use their best efforts to restructure this Agreement or other agreements between the Parties pertaining to the Project to minimize Eastman's Tax liabilities hereunder, including Eastman's sales Tax liabilities hereunder, and if so imposed, any similar Tax on the natural gas purchase(s) embedded in the Steam price, provided that no such efforts shall adversely affect either Party's financial condition relative to this Agreement.
- c. Payment of Taxes. Each Party shall ensure that no Tax lien attaches to the Project, the Plant, or the Plant Site as a result of any failure by such Party to pay any Tax.
- 12.05 <u>Maintenance of Records</u>. Both Seller and Eastman shall keep a record of all invoices, receipts, charts, computer printouts, punch cards or magnetic tapes related to the volume or price of electric power, natural gas, and Steam deliveries made under this Agreement. Such records shall be made available for inspection by either Party upon reasonable notice at the Project Site or the Plant, as the case may be, during regular business hours. All such materials shall be kept on record for a minimum of three (3) years from the date of their preparation.

12.06 Confidentiality.

a. <u>Restrictions</u>. Any Proprietary Information of a Party (the "Transferor") that is disclosed to or otherwise received or obtained by the other Party (the "Transferee") incident to this Agreement is disclosed, and shall be held, in confidence, and the Transferee shall not publish or otherwise disclose any Proprietary Information to any Person for any reason or purpose

whatsoever, or use any Proprietary Information for its own purposes or for the benefit of any Person, without the prior written approval of the Transferor, which approval may be granted or withheld by the Transferor in its sole discretion. Without limiting the generality of the foregoing, each Party shall observe the same safeguards and precautions with regard to Proprietary Information that such Party observes with respect to its own information of the same or similar kind.

b. Associated Parties. Each Party agrees that it will make available Proprietary Information received from the other Party to its own Associated Parties only on a need-to-know basis, and that all Persons to whom such Proprietary Information is made available will be made aware of the confidential nature of such Proprietary Information, and will be required to agree to hold such Proprietary Information in confidence under terms substantially identical to the terms hereof.

c. Other Permitted Disclosures. Notwithstanding the foregoing:

- i. A Transferee may provide any Proprietary Information to any Governmental Authority having jurisdiction over or asserting a right to obtain such information, provided: (A) such Governmental Authority orders that such Proprietary Information be provided; and (B) the Transferee promptly advises the Transferor of any request for such information by such Governmental Authority and cooperates in giving the Transferor an opportunity to present objections, requests for limitation, and/or requests for confidentiality or other restrictions on disclosure or access, to such Governmental Authority.
- ii. Seller may disclose Proprietary Information to any prospective Financing Party for purposes of such prospective Financing Party's evaluation in connection with the provision of debt or equity financing (including equity contributions or commitments), refinancing of any such financing, or any guarantee, insurance or credit support for or in connection with such financing or refinancing, in connection with the construction, ownership, operation, or maintenance of the Project, or any part thereof; provided that the recipient of any such Proprietary Information agrees to maintain such information in confidence under terms similar to those contained in this Agreement.
- iii. Eastman may disclose Proprietary Information to any prospective Financing Party for purposes of such prospective Financing Party's evaluation in connection with the provision of debt or equity financing (including equity contributions or commitments), refinancing of any such financing, or any guarantee, insurance or credit support for or in connection with such financing or refinancing, in connection with the construction, ownership, operation, or maintenance of the Project or the Plant, or any part thereof; provided that the recipient of any such Proprietary Information agrees to maintain such information in confidence under terms similar to those contained in this Agreement.
- d. Remedies. In the event of a breach or threatened breach of the provisions of Paragraph (a) by any Transferee, the Transferor shall be entitled to an injunction restraining such Party from such breach. Nothing contained herein shall be construed as prohibiting the Transferor from pursuing any other remedies available at law or equity for such breach or threatened breach of this Agreement.

e. <u>Term.</u> The obligation to retain information in confidence shall continue in full force and effect during the Term and for a period of ten (10) years thereafter, notwithstanding the expiration or termination of this Agreement, with respect to any information obtained by any Party prior to such termination.

f. Definition. Definition of Proprietary Information:

- i. The term "Proprietary Information" means all information, written or oral, which has been or is disclosed by the Transferor, or by any Affiliate or Associated Party of the Transferor, or which otherwise becomes known to the Transferee, or to any Affiliate, Associated Party or other party in a confidential relationship with, the Transferee, and that (A) relates to matters such as patents, trade secrets, research and development activities, draft or final contracts or other business arrangements, books and records, budgets, cost estimates, pro forma calculations, engineering work product, environmental compliance, vendor lists, suppliers, manufacturing processes, energy consumption, pricing information, private processes, and other similar information, as they may exist from time to time, or (B) the Transferor expressly designates in writing to be confidential.
- ii. Proprietary Information shall exclude information falling into any of the following categories:
- A. Information that, at the time of disclosure hereunder, is in the public domain, other than information that entered the public domain by breach of this or any other agreement, or in violation of any Law;
- B. Information that, after disclosure hereunder, enters the public domain, other than information that entered the public domain by breach of this or any other agreement, or in violation of any Law;
- C. Information, other than that obtained from third parties, that prior to disclosure hereunder, was already in the recipient's possession, either without limitation on disclosure to others or subsequently becoming free of such limitation;
- D. Information obtained by the recipient from a third party having an independent right to disclose the information; or
- E. Information that is available through independent research without use of or access to the Proprietary Information.

12.07 Public Announcements.

a. <u>By Eastman</u>. Neither Eastman nor its Affiliates shall release for publication any information regarding SkyGen Energy LLC, Seller, the Project, the Project Agreements or any other aspect of the relationship between the Parties (other than a general description of the Project or the fact that the Project Agreements exist) without Seller's prior written approval, except as required by Law or the rules of any securities exchange, in which case Eastman shall give Seller a reasonable opportunity to review and comment upon such release.

- b. By Seller. Seller will not release for publication any information regarding Eastman, the Plant, the OSBL Interconnection Facilities, the HTM Heater System, the HTM Heater Pipeline, the Project Agreements or any other aspect of the relationship between the Parties (other than a general description of the Project or the fact that the Project Agreements exist) without Eastman's prior written approval, except as required by Law or the rules of any securities exchange, in which case Seller shall give the Eastman a reasonable opportunity to review and comment upon such release.
- 12.08 No Solicitation of Workers. The Parties acknowledge that a skilled, specialized workforce, composed of each Party's employees and employees of each Party's Associated Parties (collectively, a "Party's Workers") operates, maintains, and improves the Plant and Project, as the case may be, and that such workforce is valuable to each respective Party. Accordingly, the Parties agree that during the Term, neither Party shall solicit any of a Party's Workers to leave the employ of the other Party or the other Party's Associated Parties, other than through general advertising or other means of general solicitation of workers currently utilized by either Party in the ordinary course of its business and outside the Plant Site or the Project Site. Notwithstanding the above, either Party may directly approach employee(s) of the other Party with that other Party's consent.
- 12.09 No Partnership. Notwithstanding any provision of this Agreement, Seller and Eastman do not intend to create hereby any lease, joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit. Neither Party shall have any right, power or authority pursuant to this Agreement to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. Seller and Eastman agree to take, on a timely basis, all voluntary action as may be necessary to be excluded from treatment as a partnership under the Internal Revenue Code of 1986, as amended, and, if it should appear that one or more changes to this Agreement would be required in order to prevent the creation of such a business entity, Seller and Eastman agree to negotiate promptly in good faith with respect to such changes.
- 12.10 No Duty To Third Parties. Except as provided in Article VII, this Agreement is for the sole benefit of the Parties hereto, and nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a party to this Agreement. Except as specifically provided herein, no Person shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, or both, except Eastman and Seller. Except as provided in Article VII, the Parties specifically disclaim any intent to create any rights in any Person as a third-party beneficiary to this Agreement or the services to be provided hereunder, or both.
- 12.11 <u>Dedication</u>. No undertaking by one Party to the other under this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect the status of Seller as an independent entity and not a public utility or public service company.
- 12.12 <u>Information</u>. Subject to Section 12.06, each Party shall make available to the other such other information relative to the Project as may be reasonably required to carry out the terms of this Agreement.

- 12.13 Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- 12.14 Severability. If any provision of this Agreement shall be determined to be unenforceable, void or otherwise contrary to Law, such condition shall in no manner operate to render any other provision of this Agreement unenforceable, void, or contrary to Law, and this Agreement shall continue in force in accordance with the remaining terms and provisions hereof, unless such condition invalidates the purpose or intent of this Agreement. In the event that any of the provisions, or portions or applications thereof, of this Agreement are held unenforceable or invalid by any court of competent jurisdiction, Seller and Eastman shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement by replacing the provision that is unenforceable, void, or contrary to Law with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be unenforceable, void, or contrary to Law.
- 12.15 <u>Audit Rights</u>. The Parties shall have the right throughout the Term, upon reasonable prior notice, to audit the other Party's books and records to the limited extent necessary to verify the basis for any claim by either of the Parties for payments hereunder, including the right to review all fuel cost calculations and related gas supply and transportation contracts, or to determine the other Party's compliance with the terms of this Agreement. The audited Party shall make such records available at the Project Site or the Plant, as the case may be, during normal business hours and the auditing Party shall reimburse the other Party for reasonable costs incurred by the audited Party by the audit, as supported by appropriate documentation.

12.16 Further Assurances.

- a. <u>Financing Parties</u>. Eastman acknowledges that Seller intends to finance the acquisition and construction of the Project with funds to be provided, in whole or in part, by Financing Parties, some or all of which are yet to be identified.
- b. <u>Information</u>. Eastman agrees to provide the following information and documentation as reasonably requested by any Financing Party or prospective Financing Party: (i) financial statements of Eastman, to the extent available, evidence of corporate existence, and evidence of incumbency of persons executing this Agreement; (ii) an opinion of its counsel confirming the due authorization, execution, delivery, and enforceability of this Agreement against Eastman, (iii) a consent to the collateral assignment of this Agreement to any such Financing Party, and (iv) a certificate confirming whether or not to its knowledge an Event of Default exists under this Agreement.
- c. <u>Amendment</u>. In the event that Seller determines that any amendment or modification to this Agreement is required in connection with or as a condition to the financing or refinancing of the Project, Eastman and Seller shall immediately negotiate in good faith, the terms of, and shall execute, any and all such amendments or modifications which are mutually

agreeable, provided that Eastman's rights under this Agreement shall not be limited in any way nor its obligations under this Agreement extended in any way as a result of such amendments or modifications.

- Successors and Assigns. Except to the extent otherwise indicated herein, all the 12.17 rights, benefits, duties, liabilities and obligations of the Parties hereto shall inure to the benefit of and be binding upon their respective successors and permitted assigns.
- Integration. There are no understandings between the Parties as to the subject 12.18 matter of this Agreement other than as set forth herein and in the Lease Agreement, and this Agreement and the Lease Agreement represent the entire understanding between the Parties in relation to the subject matter hereof. This Agreement supersedes any and all previous agreements, arrangements, or discussions between the Parties (whether written or oral) in respect of the subject matter hereof, all of which are hereby abrogated and withdrawn.
- Survival. The applicable provisions of this Agreement shall continue in effect 12.19 after the expiration of the Term, to the extent necessary to provide for final billing and adjustment, and to make other appropriate settlements hereunder.

IN WITNESS WHEREOF, the Parties have caused the signatures of their authorized officers to be affixed as of the day and year first above written.

EASTMAN CHEMICAL COMPANY

Title:

Global Customer Supply Chain

COLUMBIA ENERGY LLC By SkyGen Energy LLC Its Managing Member

Title:

EXHIBIT 1.01(a)

PROJECT DESCRIPTION, INTERCONNECTION FACILITIES

I. Project Description

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The cogeneration plant will be a natural gas fueled combined cycle, combustion turbine electric generating facility with a net generating capacity of approximately 500 MW. The Project will include the following major components:

- Two (2) "F-Class" natural gas fired CTs (nominal rating of 170 MW), provided that, at Seller's option, the Project may be expanded to include three (3) CTs, and associated peripheral equipment.
- Two (2) four pressure heat recovery steam generators (design operating pressures:
 1550 psig/700 psig/200 psig/30 psig) equipped with duct burners.
- One (1) extracting/condensing steam turbine (nominal rating of 175 MW) and cooling system.
- Distributed control system ("DCS"), including DCS link for key data interfaces to be located in Eastman's control room.
- ISBL Interconnection Facilities for High Pressure Steam, Intermediate Pressure Steam, steam condensate, demineralized make-up water, raw water, wastewater, filtered water, firewater, and potable water as described in the following sections of this Exhibit.
- OSBL Interconnection Facilities for High Pressure Steam, Intermediate Pressure Steam, steam condensate, demineralized make-up water, raw water, wastewater, filtered water, firewater, and potable water as described in the following sections of this Exhibit.
- Electrical substation (rated at 230 kV) and electrical interconnection to the Utility electrical grid.
- Two (2) Package Boilers, each rated to provide two hundred and fifty thousand (250,000) pph of High Pressure Steam at the pressure and temperature specified in Exhibit 5.01(b) as measured at the connection point shown in Figure 1.01(a).
- Interconnection for cooling tower make-up.
- All auxiliary equipment required for an operating cogeneration power plant.
- The Essential ISBL Facilities.

II. High Pressure Steam

Collectively, the ISBL Interconnection Facilities and the OSBL Interconnection Facilities for High Pressure Steam transfer shall consist of the following:

- steam pipe within the Cogen Site to the Point of Delivery, and within the Plant from the Point of Delivery to Eastman's Steam distribution system for High Pressure Steam; generally following the approximate pipe route shown in Figure 1.01(a). Piping will be installed above ground. Piping installed across roads or other vehicle access routes shall be installed on a pipe bridge sized to allow reasonably unimpeded vehicle access.
- b. A pressure reducing valve (if necessary to meet the pressure requirements specified in <u>Exhibit 5.01</u>), to be located in the vicinity of the High Pressure Steam Point of Delivery. Appropriate measures shall be taken by Seller to ensure that the design pressure of Eastman's Steam distribution facilities is not exceeded in the event of a failure of the pressure reducing valve.
- c. Desuperheating stations (if necessary to meet the temperature requirements specified in <u>Exhibit 5.01</u>), to be located in the vicinity of the High Pressure Steam Point of Delivery.
- Pressure, temperature, and flow metering equipment as required pursuant to Section 5.05.

III. Intermediate Pressure Steam

Collectively, the ISBL Interconnection Facilities and the OSBL Interconnection Facilities for Intermediate Pressure Steam transfer shall consist of the following:

- a. Steam pipe within the Cogen Site to the Point of Delivery, and within the Plant from the Point of Delivery to Eastman's Steam distribution system for Intermediate Pressure Steam; generally following the approximate pipe route shown in Figure 1.01(a). Piping will be installed above ground. Piping installed across roads or other vehicle access routes shall be installed on a pipe bridge sized to allow reasonably unimpeded vehicle access.
- b. A pressure reducing valve (if necessary to meet the pressure requirements specified in <u>Exhibit 5.01</u>), to be located in the vicinity of the Intermediate Pressure Steam Point of Delivery. Appropriate measures shall be taken by Seller to ensure that the design pressure of Eastman's Steam distribution facilities is not exceeded in the event of a failure of the pressure reducing valve.
- c. Desuperheating stations (if necessary to meet the temperature requirements specified in <u>Exhibit 5.01</u>), to be located in the vicinity of the Intermediate Pressure Steam Point of Delivery.
- Pressure, temperature, and flow metering equipment as required pursuant to Section 5.05.

IV. Package Boiler Steam

- a. The ISBL Interconnection Facilities for Steam transfer from the Package Boilers shall consist of the following:
 - i. Steam pipe from the Package Boilers to the High Pressure Steam pipe described in Section II(a) of this Exhibit 1.01(a). Piping will be installed above ground. Piping installed across roads or other vehicle access routes shall be installed on a pipe bridge sized to allow reasonably unimpeded vehicle access.
 - ii. A pressure reducing valve to be located in the vicinity of both the High Pressure Steam and Intermediate Pressure Steam Points of Delivery to meet the Intermediate Pressure Steam requirements set forth in Exhibit 5.01. Appropriate measures shall be taken by Seller to ensure that the design pressure of Eastman's Steam distribution facilities is not exceeded in the event of a failure of the pressure reducing valve.
 - iii. Desuperheating stations (if necessary to meet the temperature requirements specified in Exhibit 5.01), to be located in the vicinity of the High Pressure Steam and Intermediate Pressure Steam Points of Delivery.
 - Pressure, temperature, and flow metering equipment as required pursuant to Section 5.05.
- b. There will be no additional OSBL Interconnection Facilities required for Steam transfer from the Project to the Plant other than those described above in Sections II and III.

V. Steam Condensate / Demineralized Make-Up Water

- Collectively, the ISBL Interconnection Facilities and the OSBL Interconnection Facilities for condensate and demineralized make-up water transfer shall consist of the following:
 - Separate tanks for steam condensate and demineralized make-up water to be located on the Cogen Site.
 - One or more demineralized make-up water and steam condensate transfer pumps (if necessary) to be located in the vicinity of the steam condensate and demineralized make-up water tank discharges.
 - iii. One or more steam condensate and demineralized make-up water booster pumps (if necessary to supply spray water to the desuperheating stations described above, to be located in the vicinity of the steam condensate and demineralized make-up water receiving tanks.

- iv. Flow metering equipment as required pursuant to Section 5.05.
- v. Equipment necessary to monitor and, if necessary, dump condensate and/or demineralized make-up water that does not meet the quality requirements set forth in <u>Exhibit 6.03(a)</u> and <u>Exhibit 6.04</u>, respectively, prior to receipt at the Project.
- vi. Separate pipe for steam condensate and demineralized make-up water from the Plant to the Project, and within the Plant from Eastman's condensate and demineralized make-up water systems and generally following the approximate route of the pipe bridge shown in Figure 1.01(a). Piping will be installed above ground and piping installed across roads or other vehicle access routes shall be installed on a pipe bridge sized to allow reasonably unimpeded vehicle access
- b. The Points of Delivery for steam condensate and demineralized make-up water shall be located as shown in Figure 1.01(a).

VI. Raw Water

Collectively, the ISBL Interconnection Facilities and the OSBL Interconnection Facilities for raw water transfer shall consist of the following:

- a. A raw water tank (as necessary) to be located at the Cogen Site.
- One or more raw water transfer pumps (if necessary) to be located in the vicinity of the raw water Point of Delivery.
- c. A raw water pipe from the Plant to the Project, and within the Plant from Eastman's raw water system generally following the approximate route shown in Figure 1.01(a). Piping installed in areas within the Plant Site will be installed below ground. Piping installed above ground that crosses roads or other vehicle access routes shall be installed on a pipe bridge sized to allow reasonably unimpeded vehicle access.

VII. Fire Water

Collectively, the ISBL Interconnection Facilities and the OSBL Interconnection Facilities for connection to the firewater loop shall consist of the following:

- A connection to the firewater loop to be located as close as practically possible to the Cogen Site.
- b. One or more fire water booster pumps (if necessary to maintain adequate pressures and flows) to be located on the Cogen Site.

c. A fire water pipe from the Plant to the Project, and within the Plant from Eastman's firewater system. Piping installed within the Plant will be installed below ground.

VIII. Potable Water

- a. Collectively, the ISBL Interconnection Facilities and the OSBL Interconnection Facilities for connections to the potable water system shall consist of the following:
 - A connection to the potable water system to be located as close as practically possible to the Cogen Site.
 - One or more booster pumps (if necessary) to be located on the Cogen Site.
 - iii. A potable water pipe from the Plant to the Project, and within the Plant from Eastman's potable water system. Piping within the Plant will be installed below ground.
- b. A backflow prevention device shall be installed by Seller at or near the Point of Delivery for potable water.

IX. Filtered Water

Collectively, the ISBL Interconnection Facilities and the OSBL Interconnection Facilities for the transfer of filtered water shall consist of the following:

- a. A filtered water tank (as necessary) to be located within the Cogen Site.
- One or more booster pumps (if necessary) to be located in the vicinity of the filtered water Point of Delivery.
- c. A filtered water pipe from the Plant to the Project, and within the Plant from Eastman's filtered water system generally following the route shown in <u>Figure 1.01(a)</u>. Piping installed in areas within the Plant Site will be installed below ground. Piping installed above ground that crosses roads or other vehicle access routes shall be installed on a pipe bridge sized to allow reasonably unimpeded vehicle access.

X. Wastewater

a. Collectively, the ISBL Interconnection Facilities and the OSBL Interconnection Facilities for the transfer of cooling tower blowdown shall consist of a lift station and waste water pipe from the Project to the Plant, and within the Plant to Eastman's cooling tower blowdown system generally following the approximate route shown in Figure 1.01(a). Piping installed across roads or other vehicle

access routes shall be installed on a pipe bridge sized to allow reasonably unimpeded vehicle access.

- b. Collectively, the ISBL Interconnection Facilities and the OSBL Interconnection Facilities for sanitary waste water transfer shall consist of a lift station and waste water pipe from the Project to the Plant, and within the Plant to the Eastman's sanitary waste water system following the approximate route shown in Figure 1.01(a). Piping installed in areas within the Plant Site will be installed below ground.
- c. Collectively, the ISBL Interconnection Facilities and the OSBL Interconnection Facilities for boiler blowdown and other ancillary non-process water transfer shall consist of a lift station and waste water pipe from the Project to the Plant, and within the Plant to the Eastman's waste water system following the approximate route shown in Figure 1.01(a).
- d. The wastewater Points of Delivery shall be located as shown in <u>Figure 1.01(a)</u>. Piping installed in areas within the Plant Site will be installed below ground.

XI. Electrical

When applicable laws and regulations allow the sale of electricity to Eastman, the Parties shall investigate a mutually agreeable interconnection design that will allow the Project to supply electricity to the Plant at the Electric Substation Area. The interconnection design shall strive to achieve the lowest cost that allows Eastman to accept its current levels of electrical power from Utility while meeting all applicable quality, reliability, and design criteria. A preliminary schematic (one-line) of the Project's electric switchyard and its connection to the Plant is shown on page two of Figure 1.01(a).

Seller will be responsible for the cost of all facilities required to transmit and deliver up to a maximum of 70 MVA to the Plant's 13.8 kV bus, including any transformers required.

Figure 1.01(a) Page 1
Cogeneration Facility Services Connection Points - Carolina Operations

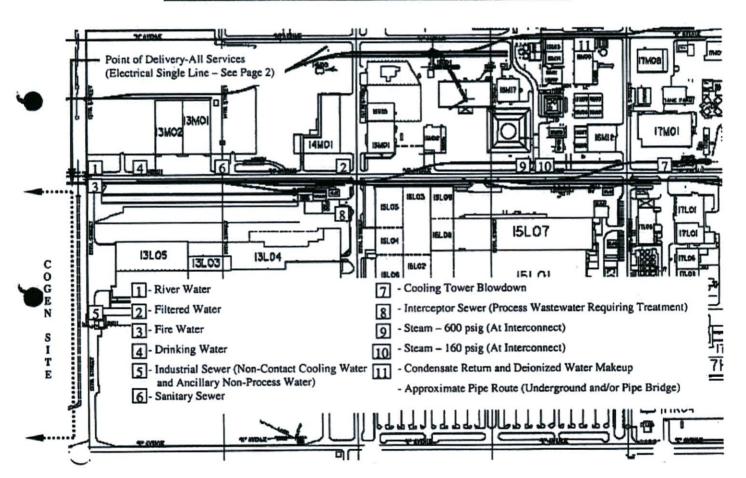


Figure 1.01(a) Page 1 Cogeneration Facility Services Connection Points - Carolina Operations

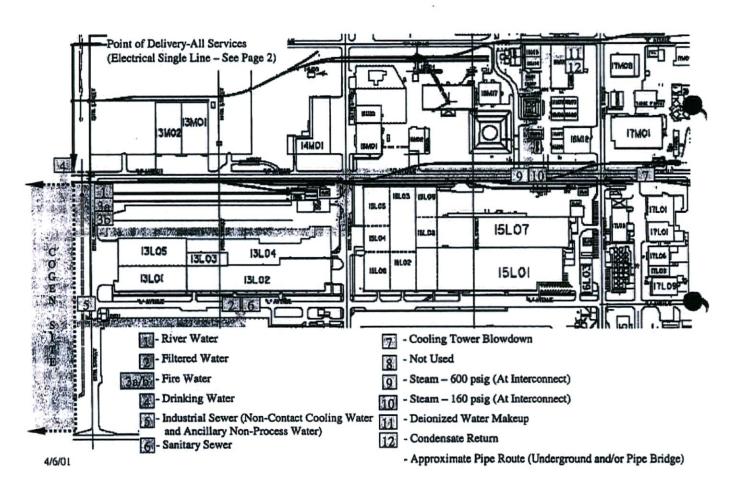


EXHIBIT 1.01 (b)

EASTMAN'S STANDARDS

The following index of documents, which shall be supplied by Eastman to Seller within three (3) months of the Effective Date, and updated pursuant to the terms of this Agreement comprise Eastman's Standards.

1. Safe Practices Manual includes:

Contractor Safety

Safe Work Permit

Hot Work Permit

Structural Change Permit

Excavation Permit

Temporary Wiring Permit

Service Shutdown - Alert Permit

Fire Protection Impairment

Permit to Work On/Near Energized Circuit

Temporary Piping Permit

- 2. White Binder (Tabbed Sections)
- 3. Hazard Communication Manual
- 4. Procedure for Waste Disposal to CED Sewer Systems
- 5. Standard Railroad Clearances
- 6. Outline for Contractor Training
- 7. CED Health & Safety Employee Relations Guideline Manual (appropriate sections listed below)

HS-210-6-2 Medical Services for Non-Eastman Personnel

HS-720-1-1A Fire Department Master Training Plan

Fire Department Organization

Fire Department Requirements for Firefighters

Fire Department Requirements for EMS Responders

Fire Department Requirements for Chemical Release Go Team Personnel

HS-720-1-6 Obtaining Aid from Outside Emergency Organizations

Telephone Listing for Outside Agencies

HS-720-1-15 Guidelines for Health and Safety Response to Requests for Hot Work

Permits or Non-Entry Atmosphere Checks

HS-740-1-1 Employee Pass; Entry and Exit of Employees to and from the Plant

HS-740-1-2 Entry and Exit of Vehicles

HS-740-1-2A Required Safety Orientation for Service Visitors

HS-740-1-3 Plant Admittance of Visitors

HS-740-1-4 Issuance of Contractor Passes

HS-740-1-4A Contractor Handbook

HS-740-1-5 CED Contractor Safety Program

Summary Chart Contractor Safety

- 8. CED Respiratory Protection Program
- 9. Emergency Plan Manual

EXHIBIT 1.01(c)

PERFORMANCE TEST

The following list of tests shall comprise the Performance Test for purposes of Section 6.01(e).

- 1. Guaranteed net electrical output test
- Demonstration tests:
 - a. One hundred percent load reject
 - b. Unit trip due to overspeed
 - c. Steam production ramp rate as set forth in Exhibit 5.01(b)
 - d. Maximum steam supply requirements as set forth in Exhibit 5.01(b)
 - e. Full duct firing high pressure steam output on natural gas
 - f. Package Boiler start-up and transfer
 - g. Package Boiler maximum load and minimum turndown
- 3. Mechanical
 - a. Steam piping (steam blow)
 - b. Safety and relief valve bench tests
- 4. Electrical Protective relay checks
- 5. Communication System RTU compatibility check
- 6. All tests related to the Essential ISBL Facilities.
- 7. Any other test as determined by the Operating Committee. The Operating Committee may waive or shorten the notice requirement specified in Section 6.01(e).

EXHIBIT 2.01

EXCEPTIONS TO EASTMAN'S REPRESENTATIONS AND WARRANTIES

NONE.

EXHIBIT 2.02

EXCEPTIONS TO SELLER'S REPRESENTATIONS AND WARRANTIES

NONE.

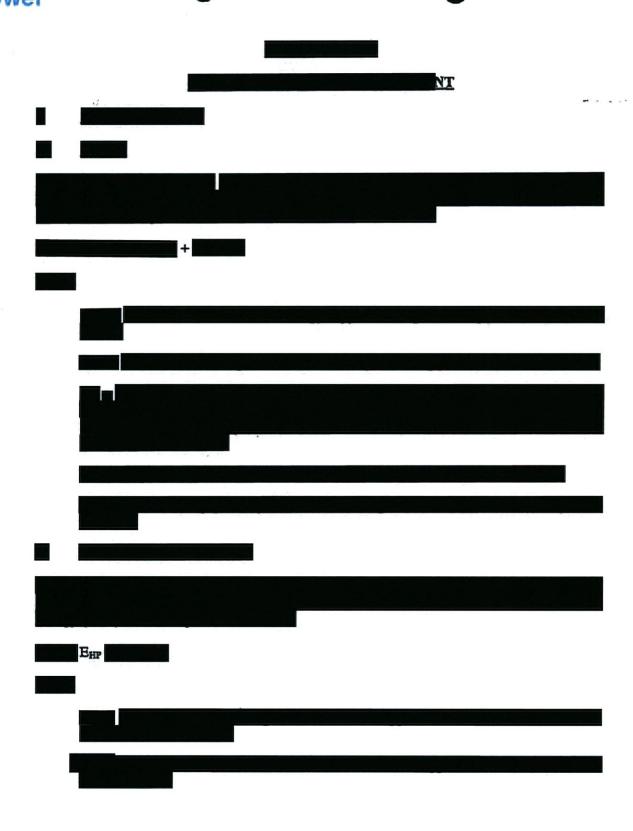


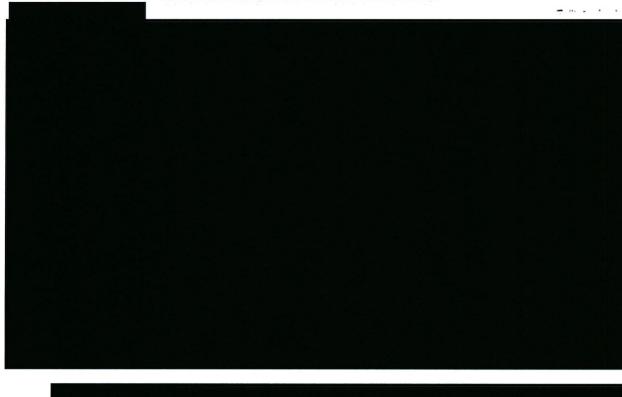


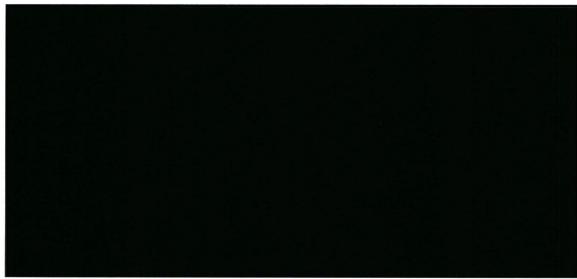


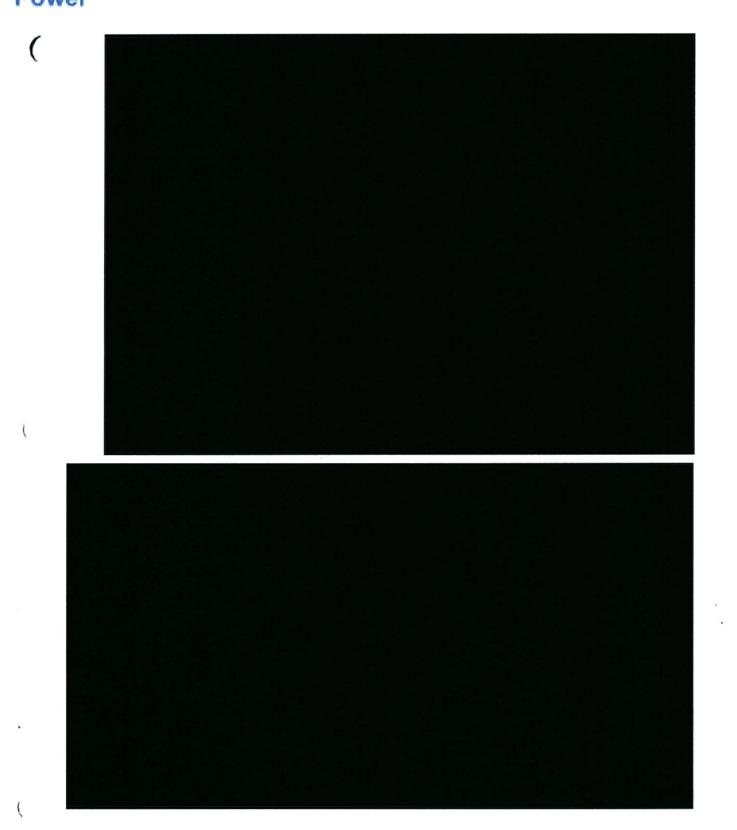
EXHIBIT 4.03(b)

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CALCULATION OF ELECTRIC PRICING







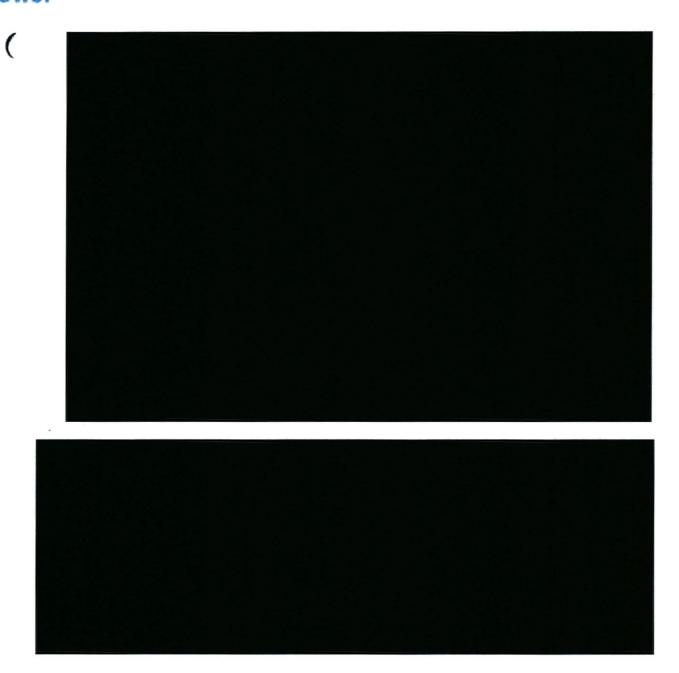


EXHIBIT 5.01(a)

ELECTRIC POWER CHARACTERISTICS

Electric power delivered from the Project to the Plant will be reliably designed to accommodate the design and maintenance of the Plant electrical distribution system. All applicable current industry and utility standards shall apply.

The Plant service system will be 3-phase, 4-wire, wye, low resistance grounded, 60-cycle alternating current at a nominal voltage of 13.8 kV. Voltage tolerance range will be plus five percent (5%) and minus two and one-half percent (2-1/2%) from nominal. These tolerance limits apply to all phases of the 3-phase system even in the presence of a voltage imbalance. Voltage imbalances shall be maintained to not exceed three percent (3%).

Electricity supplied from the Project to the Plant will be in-phase and synchronized with the regional electricity grid and constantly connected (except as may be prohibited during any Suspension Period) for uninterrupted supply. Metering of electric power will take place at the low (13.8 kV) side of the Point of Delivery for electric power, downstream of transformers and reactors newly installed or purchased from Utility pursuant to Section 6.02(d).

Short circuit availability will be a minimum of 1800 MVA at the existing 115 kV / 13.8 kV transformer primaries.

Interconnections and transformations between the Project and the Plant shall be designed in a redundant, double-ended configuration to allow for routine maintenance of equipment without interruption of service. In addition, circuit breaker protection and coordination shall be provided so that inadvertent outages of transformers and circuits shall not result in interruption of supply or reduction of the short circuit availability below the minimum requirement of the Plant.

EXHIBIT 5.01(b)

STEAM CHARACTERISTICS

Eastman shall not be obligated to accept Steam unless such Steam meets the following characteristics at the connection points shown in Figure 1.01(a), and Seller is capable of controlling Eastman's header pressure within the following parameters:

High Pressure Steam:

Pressure:

600 psig setpoint +15 psig or -5 psig, maximum pressure not to

exceed 685 psig

Flow:

300,000 pounds per hour average

400,000 pounds per hour maximum

Temp:

740°F setpoint + 10°F, -30°F

Ramp Rate:

50,000 pounds per hour of High Pressure Steam per minute

during hot operating conditions.

Intermediate Pressure Steam:

Pressure:

160 psig set point + 15 psig or - 5 psig, maximum pressure not to

exceed 200 psig.

Flow:

100,000 pounds per hour average

200,000 pounds per hour maximum

Temp:

400°F set point +10°F, -20°F

Ramp Rate:

20,000 pounds per hour of Intermediate Pressure Steam per

minute during hot operating conditions.

All Steam is to be free of rust, scale, dust, and other foreign matter. Steam lines shall be blown free prior to Initial Delivery Date at Seller's expense in accordance with Prudent Operating Practices.

EXHIBIT 6.03(a)

DEMINERALIZED MAKE-UP WATER CHARACTERISTICS

Demineralized make-up water delivered to Seller by Eastman shall have the following characteristics:

Total Hardness as CaCO₃, ppm:

Average < 0.05; maximum < 0.1

Total Copper as Cu, ppm:

Average < 0.005; maximum < 0.01

Total Iron as Fe, ppm:

Average < 0.005; maximum < 0.01

pH @ 25°C:

8.0 to 10.0

Non-volatile TOC, ppm:

Maximum < 1.5

Conductivity, µmhos/cm:

Maximum < 5.0

Silica < 0.5

EXHIBIT 6.03(c)

FILTERED WATER CHARACTERISTICS

Turbidity Total Suspended Solids Less than 5 NTU Less than 5 ppm

EXHIBIT 6.04

STEAM CONDENSATE CHARACTERISTICS

Condensate delivered to Seller by Eastman shall have the following characteristics:

Total Hardness as CaCO₃, ppm:

Average < 0.05; maximum < 0.1

Total Copper as Cu, ppm:

Average < 0.005; maximum < 0.01

Total Iron as Fe, ppm:

Average < 0.005; maximum < 0.5

pH @ 25°C:

8.2 to 9.2

Non-volatile TOC, ppm:

Maximum < 10.0

Conductivity, µmhos/cm:

maximum < 35

The blended steam condensate return and demineralized make-up water return temperature shall be within the range of fifty degrees (50°) F to two hundred twelve degrees (212°) F, depending on the amount of condensate that is available to blend with the demineralized make-up water. The maximum temperature is based on Eastman returning eighty-five percent (85%) of the Steam delivered to it as condensate (on a mass basis).

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FIRST AMENDMENT TO ENERGY SERVICES AGREEMENT

THIS FIRST AMENDMENT TO ENERGY SERVICES AGREEMENT ("Amendment") dated as of August 1, 2001, is entered into between EASTMAN CHEMICAL COMPANY ("Eastman") and COLUMBIA ENERGY LLC ("Sellet").

RECITALS:

Eastman and Seller entered into an Energy Services Agreement dated as of August 15, 2000 (the "Original ESA"). All capitalized terms used herein and not specifically defined herein shall have the meanings set forth in the Original ESA for such terms. Since the date of the Original ESA, the Parties have moved forward with their respective plans and specifications relating to their obligations under the Project Agreements sufficiently to determine that various amendments and supplements to the terms of the Original ESA are necessary, and the Parties desire to enter into this Amendment to reflect such amendments or supplements to the Original ESA, as set forth herein.

AGREEMENT TO AMEND:

Now, therefore, for and in consideration of the foregoing, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Eastman, intending to be legally bound, agree to amend the Original ESA as follows:

- All references in the Original ESA to "SkyGen Energy LLC" are hereby amended to refer to "CCFC Development Company, LLC".
- All references in the original ESA to "Maintenance Outages" are thereby amended to refer to "Seller Maintenance Outages."
- 3. Section 1.01 is amended as follows:
 - a. by inserting the following definition, in alphabetical order, after the definition for "Eastman Improvements":

"Eastman Maintenance Outage" shall mean any period when Eastman, despite performance of its obligations under Section 5.04.b, is unable to deliver or accept any one or more of the cammodities described in Sections 6.03, 6.04 or 6.05 due to maintenance of the Eastman Improvements or any part thereof; provided, however, that the suspension of, or reduction in, Eastman's performance of its obligation to deliver or accept the aforementioned commodities shall be of no greater scope than is required by the Eastman Maintenance Outage, and shall be of no longer duration than is required by the Eastman Maintenance Outage.

- the definition for "Project Agreements" is modified by inserting immediately before the period the following:
- ", together with such side letters and written supplemental agreements as may be executed and entered into by the Parties with respect to the foregoing as of or after August 1, 2001, including that certain letter dated as of August 1, 2001, among the Parties and Calpine Corporation regarding self-insurance";
- c. the definition for "Seller Maintenance Outage" is amended by inserting before the period the following:
- ": provided, however, that the suspension of, or reduction in, Seller's performance of its obligation to deliver steam or electric power shall be of no greater scope than is required by the Seller Maintenance Outage, and shall be of no longer duration than is required by the Seller Maintenance Outage."
- d. by inserting at the end of Section 1.01 the following definition:
- "Wetlands Mitigation Area" shall have the meaning specified in Section 1.01 of the Lease."
- 4. Section 1.02.a.vii is amended by inserting after the words "under South Carolina law;" the following: "(including ordinary negligence and gross negligence, except as otherwise expressly specified)".
- Exhibit 1.01.a is amended as follows:
 - a. by adding at the end of Section I Project Description the following:
 - Pressure and flow metaring equipment required pursuant to Section 5.06.";
 - b. by changing all references to Section 5.05 in such exhibit to be references to Section 5.06.
- Figure 1.01.a of the Original ESA is hereby deleted and the Revised Figure 1.01.a pages 1 and 2, attached hereto is substituted therefor.
- The initial paragraph of Section 4.01.d is hereby deleted in its entirety and the following is substituted therefor:
 - 4.01(k). Package Boilers. In the event that Seller fails to deliver Steam from the Package Bailers to the extent required under Section 4.01(d) for any reason other

than Seller Maintenance Outages (provided that Seller has performed its obligations under Section 5.02(a)). Force Majeure, a fathere on the part of Eastman to request Steam or an Eastman Adverse Act, and such failure continues for a continuous period of seventy-two (72) hours after written notice from Eastman to Seller (the "Steam Demand Notice") demanding resumption of such delivery of Steam, provided, however, if the suspension of, or reduction in, Seller's performance of its obligation to deliver steam pursuant to 4.01(d) is due to an Eastman Adverse Act, such suspension or reduction shall be of no greater scape and no longer duration than is required to restore such services to the condition existing prior to the Eastman Adverse Act, the following provisions shall apply:

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- Section 5.01.a is hereby amended to delete reference to nominal voltage of "13,8 or 115 Kv" and to substitute therefor "115 or 230 Kv".
- Exhibit 5.01.a of the Original ESA relating to Electric Power characteristics is hereby deleted and the <u>Revised Exhibit 5.01.a</u> attached hereto is substituted therefor.
- Exhibit 5.01.b of the Original ESA relating to Steam characteristics is hereby deleted and the Revised Exhibit 5.01.b strached hereto is substituted therefor.
- 11. Section 5.04.d is amended by adding at the end of the first sentence thereof the following phrase:

"but in no event shall such operating and maintenance schedules be provided later than sixty (60) days prior to any scheduled Eastman Maintenance Outages and/or Seller Maintenance Outages."

- 12. Subparagraph (i) of Section 6.02 b. is hereby amended by deleting "three (3) new HTM heaters each rated at thirty (30) MMBtu/hour capacity," and substituting therefor "two (2) new HTM heaters each rated at forty-five (45) MMBtu/hour capacity,"
- 13. The last sentence in Section 6.03.e is amended by inserting, after the words "Firewater supply shall be", the words "at no charge to Seller and".
- 14. Section 6.05.a is amended as follows:
 - a. the introductory paragraph of Section 6.05.a is hereby deleted in its entirety and the following is substituted therefor:

- a. Wastewater, Wastewater from the Project shall include cooling tower blowdown, botler blowdown, washdowns, oily water drains (after treatment in Seller's oil-water separator), sanitary wastewater, contaminated wastewater, and plant and equipment drains. Except for contaminated wastewater as defined in Subparagraph vit of this Section 6.05.a, Eastman shall be responsible for all costs associated with the disposal of such wastewater, including costs required to modify Eastman's existing Authorizations to cover the additional amounts of discharge.
- b. by changing the numbering of the original subparagraph vii to viii and to insert a new subparagraph vii as follows:
- vii. Contaminated wastewater in amounts not to escreed fifty (50) gpm shall be discharged to Eastman's interceptor sewer system (for transport to Eastman's industrial wastewater treatment facilities) at a mutually agreed location. The discharge shall contain no floating solids or oil except in trace amounts and shall have a pH between 4 and 11. In addition the discharge shall have an oil and grease concentration of less than ten (10) milligrams per liter, shall have a total suspended solids concentration of less than three hundred (500) milligrams per liter, shall have a total dissolved solids concentration of less than three hundred (300) milligrams per liter, and shall have a BOD5 concentration of less than five hundred (500) milligrams per liter. The temperature of the discharge shall not exceed 105 F.

Any secondary containment areas for bulk chemical storage that are connected to the interceptor sewer system shall have normally closed valves to prevent loss of large amounts of material directly to the interceptor sewer system. Seller shall immediately report to Eastman any accidental discharge by Seller or Seller's Associated Parties of any material to the interceptor sewer system. The intentional discharge by Seller of any material to the interceptor sewer system other than uncontaminated stormwater must be approved by Eastman prior to the discharge. Notifications and pre-approvals shall be made as outlined in Eastman's Standards, including the portions thereof referred to therein as the "Carolina Operations Environmental Incident Reporting Procedure" and the "Procedure for Waste Disposal to CED Sewer Systems".

Seller shall bear all costs for treatment of wastewater sent to the interceptor sewer system. Such costs payable by Seller shall be based on the actual variable wastewater treatment cost.

15. A new Section 6.05A is hereby inserted between Sections 6.05 and 6.06 as follows:

.

6.05A. Failure to Supply or Accept Water. In the event that Eastman fails, for any reason other than Force Majeure, Eastman Maintenance Outage or a Seller Adverse Act, to (i) deliver to Seller at the applicable Point of Delivery designated for such delivery in Exhibit 1.01(a), demineralized make-up water, condensate, raw water, filtered water, or firewater as required pursuant to Section 6.03, or (ii) accept wastewater or atornwater from Seller as required pursuant to Section 6.05, and such failure continues for a continuous period of seventy-two (72) hours after written notice from Seller to Eastman demanding resumption of such delivery or acceptance, Seller shall, in addition to its other rights under this Agreement, have the option to use Eastman's Infrastructure in accordance with the provisions of Section 3.04(c) as if such continued failure were an Eastman Suspension Period, provided, however, if the suspension of, or reduction in, Eastman's performance of its obligations under Subparagraphs (i) and (ii) above is due to a Seller Adverse Act, such suspension or reduction shall be of no greater scope or longer duration than is required to restore such services to the condition existing prior to the Seller Adverse Act.

16. Section 6.06 is hereby amended by deleting the first sentence thereof and substituting the following therefor:

Notwithstanding the foregoing sections of this Article 6, during the construction period of the Project, at Seller's reasonable request and subject to completion of the required interconnection facilities, Eastman shall provide Seller with the commodities and services listed in Exhibit 6.06, in accordance with the terms and conditions of Sections 6.03, 6.04 and 6.05.

- 17. Section 6.08.b.ii is hereby amended to insert immediately before the period at end of that section the following: ": provided, however, that Eastman shall be responsible for the operation and maintenance of, and will bear full risk of loss with respect to, Seller's HTM Heater Interests".
- Article 9 is hereby emended as follows:
 - Section 9.01 is hereby deleted in its entirety and the following is substituted therefore:

9.01 Risk of Loss.

a. <u>Seller</u>. Seller shall be responsible for and shall bear the full risk of loss (i) with respect to any loss of or damage to the Project and any other property located inside the boundary lines of the Cogen Site; (ii) with respect to any loss of or damage to the OSBL Interconnection Facilities during construction if Seller's Associated Parties construct the OSBL Interconnection Facilities pursuant to Section 6.02.a. hereof; and (iii) with respect to any bodily injury or death, or loss

of or damage to any other property (A) arising out of the construction, ownership, operation, or maintenance of the Project or any other property inside the boundary lines of the Cogen Site or any Easements for the exclusive use of the Seller, (B) arising out of the construction of the OSBL Interconnection Facilities if Seller's Associated Parties construct the OSBL Interconnection Facilities pursuant to Section 6.02.a. hereof, (C) caused by electric power or Steam produced by the Project, or natural gas delivered under this Agreement, and occurring toside the boundary lines of the Cogen Site, or (D) arising out of the use by Seller's and Seller's Associated Parties of the Easements and any licenses granted under the Lease Agreement; provided, however, that Seller shall not be responsible for any property loss or damage, to the extent arising out of the gross negligence or willful misconduct of Eastman or Eastman's Associated Parties, or bodily injury or death, to the extent arising out of the negligence or willful misconduct of Eastman or Eastman's Associated Parties.

- Eastman. Eastman shall be responsible for and shall bear the full risk of loss (i) with respect to any loss of or damage to the Plant or to the OSBL Interconnection Facilities (except for any loss of or damage to the OSRL Interconnection Facilities during construction of Seller's Associated Parties construct the OSBL Interconnection Facilities pursuant to Section 6.02.a. hereof), the OSBL HTM Heater Facilities, and any other property located outside the boundary lines of the Cogen Site except for any part of the Project outside of the Cogen Site; and (ii) with respect to any bodity injury or death, or loss of or damage to any other property (A) arising out of the construction, ownership, operation, or maintenance of the Plant, the OSBL HTM Heater Facilities, or any other property outside the boundary lines of the Cogen Site except for any part of the Project outside of the Cogen Site, and excluding any of such matters arising out of the use by Seller or Seller's Associated Parties of the Easements and any licenses granted under the Lease Agreement (except to the extent arising out of the negligence of willful misconduct of Eastman or Eastman's Associated Parties), (B) arising out of the operation or maintenance of the OSBL Interconnection Facilities, or (C) caused by electric power or Steam produced by the Project, or natural gas delivered under this Agreement, and occurring outside the boundary lines of the Cogen Site; provided, however, that Eastman shall not be responsible for any property loss or damage to the extent arising out of the gross negligence or willful misconduct of Seller or Seller's Associated Parties, or bodily injury or death, to the extent arising out of the negligence or willful misconduct of Saller or Seller's Associated Parties.
- b. Sections 9.02.a and b are hereby deleted in their entirety and the following sections are substituted therefore:

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9.02 Indemnification.

By Seller. Seller shall protect, indemnify and hold harmless Eastman and its Associated Parties against and from any Indemnifiable Cost arising out of any injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction of, property belonging to or leased by Eastman, Seller, or others (each a "Claim"), to the extent resulting from or attributable to the negligence or willful misconduct of Seller or its Associated Parties arising out of (i) the performance of Seller's obligations under the Lease Agreement, or (ii)(A) any construction work on the Project, the Wetlands Mitigation Area, or Seller's work in the Spur Track Area, and, if the Seller's Associated Party constructs the OSBL Interconnection Facilities pursuant to Section 6.02.a hereof, the construction of the OSBL Interconnection Facilities, including the use of any temporary Easements or licenses during the Construction Period, (B) the ownership of the Project or the use and exercise of any license granted under the Lease Agreement, or (C) the operation and maintenance of the Project or any other property located inside the boundaries of the Cogen Site, including the delivery of electric power, Steam, or natural gas to the boundary lines of the Cogen Site, excepting (x) any Indemnifiable Cost relating to property damage to Eastman's property to the extent caused by the ordinary negligence of Seller or its Associated Parties; (y) any Indemnifiable Cost caused by the Gegligence or willful misconduct of Eastman or its Associated Parties or (2) any Indomnifiable Cost resulting solely from (1) Eastman's management of the construction of the OSBL Interconnection Facilities, (2) the construction of the HTM Financed Facilities, (3) the ownership. operation, and maintenance of the OSBL Interconnection Facilities or the OSBL HTM Heater Facilities, or (4) the potential contamination that is the subject of the Consent Agreement, provided, however, that Seller and its Associated Parties shall comply with all of the terms of such Consent Agreement and shall indemnify Eastman from any Indemnifiable Cost arising out of the fathers of Seller or Seller's Associated Parties to comply with the Consent Agreement. Seller shall protect, indemnify, and hold harmless Eastman from any claims of Seller's creditors to any right, title, or interest in the Plant.

b. By Eastman. Eastman shall protect, indemnify, and hold harmless Seller and its Associated Parties against and from any Indemnifiable Cost arising out of any Claim to the extent resulting from or attributable to the negligence or willful misconduct of Eastman or its Associated Parties arising out of (1) the performance of Eastman's obligations under the Lease Agreement or (ii)(A) the construction of the HIM Financed Facilities and, if Eastman's contractor constructs the OSRL Interconnection Facilities pursuant to Section 6.02.a hereof, the construction of the OSBL Interconnection Facilities, (B) the ownership of the Plant, or (C) the operation and maintenance of the Plant, the OSBL Interconnection Facilities or any other property located outside the boundaries of the Cogen Site, including the receipt of

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electric power, Steam, or natural gas under this Agreement, excepting (z) any Indemnifiable Cost relating to property damage to Seller's property to the extent caused by the ordinary negligence of Eastman or its Associated Parties; (y) any Indemnifiable Cost caused by the negligence, or willful misconduct of Seller or its Associated Parties or (z) any Indemnifiable Cost resulting solely from the construction, operation or maintenance of the Project, the Wetlands Mitigation Area or Seller's work in the Sput Track Area. Eastman shall protect, indemnify, and hold harmless Seller from any claims of Eastman's creditors to any right, title, or interest in the Project, the OSBL Interconnection Facilities, and Seller's HTM Heater Interests.

- c. Section 9.02.d.iii is deleted in its entirety and the following is substituted therefor:
- tii. Each Party shall be responsible for all claims of the Party's own employees arising out of any provision of any Workers' Compensation Law excluding claims arising out of the gross negligence or willful misconduct of the other Party or such other Party's Associated Parties.
- d. Section 9.02.f is deleted in its entirety and the following is substituted therefor:

Net Amount. In the event that an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual out-of-pocket loss, net of any insurance proceeds, self-insurance proceeds or other recovery actually received by the Indemnified Party (or which would be received if the Indemnified Party had obtained the insurance policies described in Article 13 of the Lease Agreement) specifically attributable to the indemnified Claim.

 Section 12.02 is amended to delete the original address for the Seller and to replace it with the following:

> Columbia Energy LLC E/o Calpine Northbrook Energy, LLC Edens Corporate Center 650 Dundee Road, Suite 350 Northbrook, Illinois 60062 Phone: 847-559-9800 Telefax: 847-559-1805

Telefax: 847-559-1805 Attention: Project Manager

 Section 12.07.a is amended by deleting the words "SkyGen Energy LLC" and substituting therefor the words "Calpine Corporation". 10.04. 2004. 16.74. 534. 201. 2777 THUCK LLF HUUBUH. - 713 225 7847 ()1851438880118880 P.10/17

The Parties hereby supulate and agree that the Original ESA, remains in full force and effect in accordance with its terms, as amended hereby.

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EASTMAN CHEMICAL COMPANY

By: Aug.
Name: Barry R

COLUMBIA ENERGY LLC

By CCFC II Development Company LLC

Its Managing Member

By: Name: Title:

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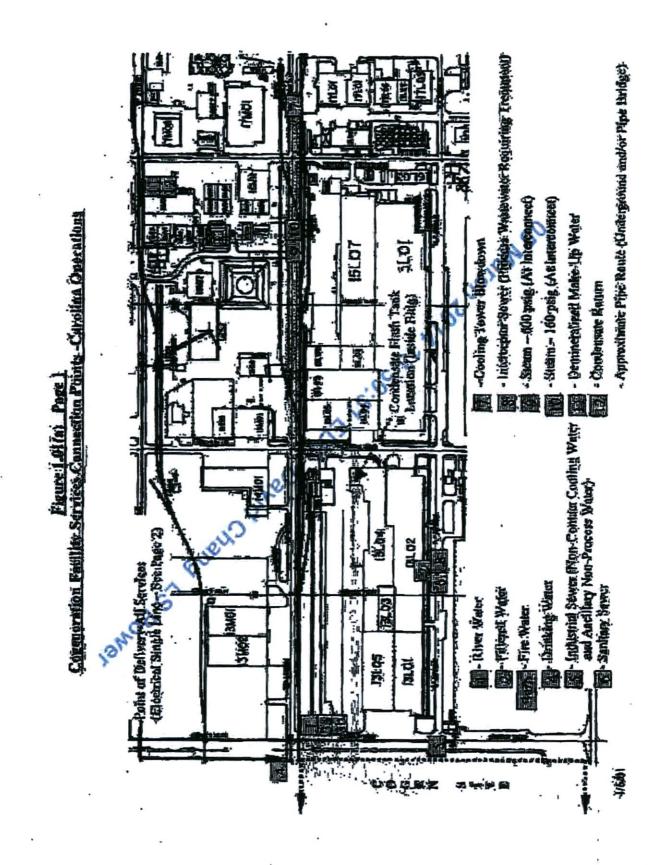
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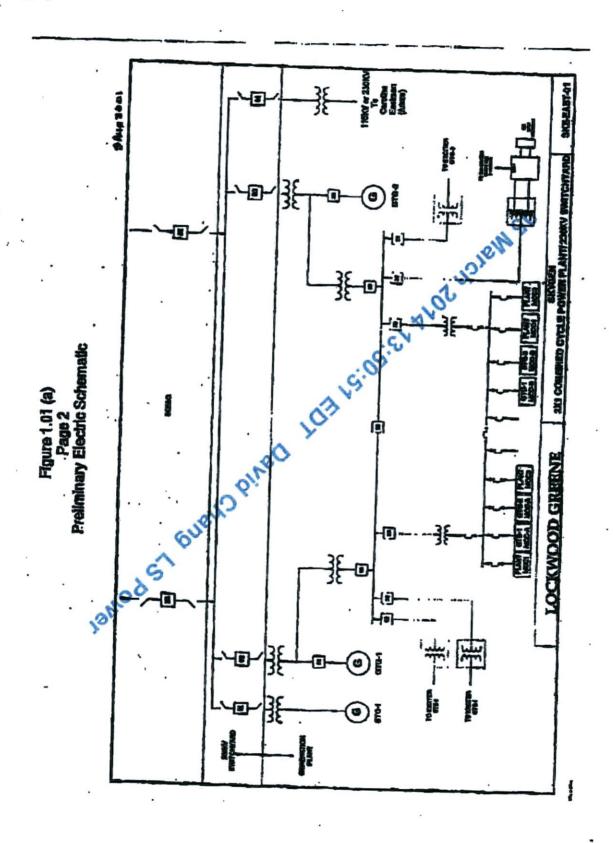
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REVISED EXHIBIT 5.01(a)

ELECTRIC POWER CHARACTERISTICS

Electric service delivered by the Project to the Plant will be reliably designed to accommodate the design and maintenance of the Plant electrical distribution system. All applicable current industry and utility standards shall apply.

The Plant service system will be 3-phase, 4-wire, wye, low resistance grounded, 60-cycle alternating current at a nominal voltage of 13.8 kV. Voltage tolerance range will be plus five percent (5%) and minus two and one-half percent (2-1/2%) from nominal. These tolerance limits apply to all phases of the 3-phase system even in the presence of a voltage imbalance. Voltage imbalances shall be maintained to not exceed three percent (3%).

Electricity supplied from the Project to the Plant will be in-phase and synchronized with the regional electricity grid and constantly connected (except as may be prohibited during any Suspension Period) for uninterrupted supply. Metering of electric power will take place at the low (13.8 kV) side of the Point of Delivery for electric power, downstream of transformers and reactors newly installed or purchased from Utility pursuant to Section 6.02(d).

Short circuit availability will be a minimum of 1800 MVA at the existing 115 kV / 13.8 kV transformer primaries.

Interconnections and transformations between the Project and the Plant shall be designed in a redundant, double-ended configuration to allow for routine maintenance of equipment without interruption of service. In addition, circuit breaker protection and coordination shall be provided so that inadvertent outages of transformers and circuits shall not result in interruption of supply or reduction of the short circuit availability below the minimum requirement of the Plant.

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REVISED EXHIBIT 5.01(b)

STEAM CHARACTERISTICS

Eastman shall not be obligated to accept Steam unless such Steam meets the following characteristics at the connection points shown in Figure 1.01(a), and Seller is capable of controlling Eastman's header pressure within the following parameters:

High Pressure Steam:

600 psig setpoint +30 psig or -5 psig, maximum pressure Pressure:

not to exceed 640 psig, maximum temperature not to

exceed 750°F

300,000 pounds per hour average Flow:

400,000 pounds per hour maximum

740°F setpoint + 10°F, -30°F Temp:

50,000 pounds per hour of High Pressure Steam per Ramp Rate:

minute during hot operating conditions.

Intermediate Pressure Steam:

160 psig set point + 15 psig or - 5 psig, maximum pressure not to exceed 175 psig, maximum temperature Pressure:

not to exceed 500°F.

Flow: 100,000 pounds per hour average

200,000 pounds per hour maximum

420°F set point +20°F, -20°F

Ramp Rate: 20,000 pounds per hour of Intermediate Pressure Steam

per minute during hot operating conditions.

All Steam is to be free of rust, scale, dust, and other foreign matter. Steam lines shall be blown free prior to Initial Delivery Date at Seller's expense in accordance with Prudent Operating Practices.

COLUM 2.22.3-01602

SECOND AMENDMENT TO ENERGY SERVICES AGREEMENT

THIS SECOND AMENDMENT TO ENERGY SERVICES AGREEMENT ("Second Amendment") dated as of October 1, 2002, is entered into between EASTMAN CHEMICAL COMPANY ("Eastman") and COLUMBIA ENERGY LLC ("Seller").

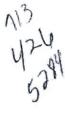
RECITALS:

Eastman and Seller entered into an Energy Services Agreement dated as of August 15, 2000 (the "Original ESA") and amended the Original ESA on August 1, 2001 pursuant to the First Amendment to the Energy Services Agreement (the "First Amendment"). The Original ESA as amended by the First Amendment is referred to herein as the "Amended ESA". All capitalized terms used herein and not specifically defined herein shall have the meanings set forth for such terms in the Amended ESA. Since the date of the Amended ESA, the Parties have moved forward with their respective plans and specifications relating to their obligations under the Project Agreements sufficiently to determine that an additional amendment to the terms of the Amended ESA is necessary, and the Parties desire to enter into this Second Amendment to reflect such amendment to the Amended ESA, as set forth herein. Any reference in the Project Agreements to the "ESA" means the Amended ESA as further amended hereby.

AGREEMENT TO AMEND:

Now, therefore, for and in consideration of the foregoing, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Eastman, intending to be legally bound, agree to amend the Amended ESA as follows:

- Section 1.01 is amended as follows:
 - (a) The definition for "Lease Agreement" is modified by deleting the words "Ground Lease Agreement.[sic], of even date herewith," and substituting the following therefor: "Amended and Restated Ground Lease Agreement dated as of August 1, 2001," as the same may be amended hereafter by the Parties from time to time.
 - The definition for "Minimum Steam Purchase" is modified by deleting reference to "nine thousand (9,000) MMBtu" and substituting therefor "three thousand (3,000) MMBtu".
 - (c) The definition for "Package Boilers" is deleted and the following is inserted in its place:
 - "Package Boilers" shall mean the Project's three (3) back-up boilers, each rated to provide at least two hundred and fifty thousand (250,000) pph of High Pressure Steam at the pressure, temperature, and flows specified in Exhibit 5.01(b) as measured at the connection point shown in Figure 1.01(a).



(d) The following definitions are deleted in their entirety:

"Price for Package Boiler Steam"

"Tier One Fuel"

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"Tier One Net Thermal Energy"

"Tier One Thermal Energy Price"

"Tier Two Fuel"

"Tier Two Net Thermal Energy"

"Tier Two Thermal Energy Price"

(e) The definition for "Initial Delivery Date" is modified by deleting that part of the sentence following "HTM Heater Systems;" and substituting the following therefore:

and the Project has commenced the regular delivery of Steam up to the Maximum Steam Demand as requested by Eastman and Natural Gas in accordance with the terms of this Agreement (or the Project is capable of so commencing, and would have so commenced but for Eastman's failure to request such Steam and/or Natural Gas).

(f) The following definition for "Part 75 Regulations" is added:

"Part 75 Regulations" shall mean the rules and regulations pertaining to continuous emissions monitoring promulgated by the United States Environmental Protection Agency as codified in Title 40 Code of Federal Regulations Part 75, as amended, and associated federal regulations.

- (g) The following definition for "Part 75 Upgrades" is added:
 - "Part 75 Upgrades" shall have the meaning specified in Section 6.01.i [Paragraph 10 of this Second Amendment].
- (h) "Hot Standby" shall have the meaning specified in Section 5.02 (a) iv.
- (i) "Warm Standby" shall have the meaning specified in Section 5.02 (a) v.
- Section 4.01.d is hereby modified by deleting the last sentence thereof and substituting the following therefor:

Eastman shall pay for Steam purchased under this Paragraph at the price set forth in Part I.A and I.B of Exhibit 4.03(a);

 Exhibit 4.03(a) of the original ESA relating to calculation of steam payment is hereby deleted and the revised Exhibit 4.03(a) attached hereto is substituted therefore. All references in the Project Agreements to Exhibit 4.03(a) shall mean the revised Exhibit 4.03(a) attached hereto.

- 5. Section 5.02.a. is amended as follows: Sections 5.02.a.i. and iii. are hereby amended to read as follows, and Section 5.02.a.iv is deleted in its entirety and the following Sections 5.02.a.iv. through vi. are substituted therefor:
 - i. Under normal operation, except during periods of Economic Dispatch, both CTs will operate at full load and provide Steam to Eastman through steam turbine extraction and/or from the HRSG. One Package Boiler will operate in a Warm Standby mode with steam to the mud drum for quick start-up. In the event that one (1) CT/HRSG is out of service, two (2) of the Package Boilers will be brought to to Hot Standby. In the event that both CTs and HRSGs are out of service, steam will be provided by two of the three Package Boilers, with the third boiler placed in Hot Standby.

- iii. Seller will coordinate with Eastman whenever maintenance is scheduled for a Package Poiler that is expected to take longer than 8 hours to complete. Seller shall not schedule routine maintenance simultaneously on two Package Boilers.
- iv. "Hot Startdby" shall mean the status of a Package Boiler when the Package Boiler is maintained at 580 to 600 psig 650 to 670F and is available for immediate operation at full load.
- v. "Warm Standby" shall mean the status of a Package Boiler when the Package Boiler is maintained at above ambient temperature by introduction of sparge steam into the mud drum with all systems aligned and ready for immediate firing.
 - vi. Notwithstanding anything above, the Operating Committee may from time to time modify or change the requirements and definitions of Section 5.02.a.i through v. during the Term of this Agreement.
- Section 5.10.a. is hereby amended to insert after the last sentence thereof the following:

In furtherance thereof, Eastman and Seller have jointly agreed upon the construction schedule, attached to this Second Amendment as <u>Exhibit</u> 5.10(a), for the Project, the HTM Financed Facilities, the OSBL Work,

and the interconnection of such facilities, reflecting interim completion milestones for significant critical path components and providing for the achievement of the Initial Delivery Date by March 1, 2004 The Operating Committee may jointly approve, from time to time, adjustments of the interim completion milestones, but may not adjust the Initial Delivery Date of March 1, 2004. Eastman and Seller will continue to conduct at least monthly Operating Committee meetings to review, among other things, overall Project progress, critical schedule milestones and project contingency planning.

 Section 5.10.d. is hereby deleted in its entirety and the following is substituted therefore:

> Seller shall use best efforts to cause the Initial Delivery Date to occur by March 1, 2004. In the event that the Initial Delivery Date does not occur on or before March 1, 2004, Seller shall pay to Eastman, for each day that the Initial Delivery date is delayed beyond March \$2004, delay damages of two thousand dollars (\$2,000); provided, however, that such amount shall only be paid out of proceeds received from Seller's insurance provider for delay in start up (or Seller's self insurance as permitted under the Lease Agreement), and provided further, that the March 1, 2004 deadline shall be extended, on a day for day basis, during the pendency of any Eastman Adverse Act. Such damages shall be paid on the date that is five (5) business days after Seller receives such insurance proceeds. The Parties acknowledge and agree that Eastman's actual damages resulting from Seller's delay in achieving the Initial Deliver Date as provide herein would be difficult or impracticable to calculate and that, in light of the circumstances, such delay damages are not penalties, but represent a reasonable approximation of such damages, and represent Eustman's exclusive remedy for Seller's delay, except as provided in Sections 6.01.i. 6.01.j and 6.02.f.iii below. Seller's failure to achieve the Initial Delivery Date by March 1, 2004, as such deadline may be extended as a direct result of Force Majeur or an Eastman Adverse Act, shall not constitute a Default or an Event of Default with respect to Seller as long as Seller has used best efforts to achieve the Initial Delivery Date by March 1,2004. The Parties agree that Seller's obligation to use best efforts in achieving the Initial Delivery Date by March 1, 2004 is a material obligation of Seller.

- The second sentence in section 6.01.b.i is amended by inserting after the words "inclusive of interest during construction" and inside the parenthetical, the words "not to exceed \$1,335,047".
- A new section 6.01.i. is hereby inserted as follows:

<u>Part 75 Upgrades.</u> Seller will, promptly upon request therefore, reimburse Eastman's reasonable and documented costs to procure, install and certify upgrades to Eastman's existing monitors to bring such

monitors into compliance with Part 75 Regulations no later than April 30, 2003. Upon installation of monitor equipment upgrades to achieve compliance with Part 75 Regulations ("Part 75 Upgrades"), Eastman shall convey title to such Part 75 Upgrades to Seller and shall maintain the same in good working order and insure (or self-insure as permitted under the Lease Agreement) the same for the full replacement cost thereof. Following Initial Delivery Date and the retirement of the Part 75 Upgrades, Seller will have the right to cause such Part 75 Upgrades to be removed, at Seller's cost, from the Eastman Plant for re-use or resale at Seller's discretion and for Seller's benefit. If it is beneficial to Eastman and Seller, the parties will endeavor to sell both Eastman's and Seller's interests in the existing monitors and the Part 75 Upgrades as a complete system with proceeds from the sale shared as mutually agreed by the Operating Committee.

A new section 6.01.j. is hereby inserted as follows:

Repairs and Other Work on Existing Boilers. Notwithstanding anything in the ESA to the contrary, if the Initial Delivery Date does not occur by October 1, 2003, Seller shall, promptly upon request therefore, reimburse Eastman for all costs and commitments incurred from time to time after October 1, 2003 for repairs, upgrades, replacements or other work, possibly including but not limited to installation of low NO_X burners, DCS systems and replacement of inoperable tube sections, on Eastman's existing boilers that are reasonably necessary in order to continue operating such existing boilers as they are then currently being operated and in compliance with applicable Laws until the Initial Delivery Date is achieved. This Subsection shall remain in effect until Initial Delivery Date is achieved.

11. Section 6.02.b is hereby amended to insert the following after the first sentence thereof:

Eastman shall have the option of modifying the scope of the HTM Heater System Upgrades prior to the Initial Delivery Date. After the Initial Delivery Date, from time to time during the Term of this Agreement, Eastman shall have the right to make further modifications to the scope of the HTM Heater System Upgrade

A new section 6.02.f.iii. is hereby inserted as follows:

Notwithstanding anything in the ESA to the contrary, if the Initial Delivery Date does not occur by March 1, 2004, and thus Eastman uses its existing NO_x allocations in order to continue to operate its existing boilers in compliance with applicable Laws, (i) Seller will procure its own NO_x allocations and shall waive Eastman's requirements under Section 6.02.f to supply Seller with NO_x allocations for the 2004 ozone season; and (ii)

Seller, at its expense, will supply Eastman with all NOx allocations needed by Eastman to continue to operate its existing boilers in compliance with applicable Laws to the extent that they exceed the amount of NOx allocations that Eastman would have been required to supply to Seller under Section 6.02.f but for the waiver in clause (i) above. This Subsection shall remain in effect for subsequent ozone seasons past the 2004 season until Initial Delivery Date is achieved.

13. Section 6.08.e is hereby amended to insert the following at the end of that section:

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At any time after the Initial Delivery Date, upon not less than one Injudred twenty (120) days' prior written notice to Seller, Eastman will have the right to repurchase the Essential ISBL Facilities and Seller's HTM Heater Interests upon paying Seller in cash or cash equivalent the greater of (x) the entire HTM Heater Capital Charge, in an amount equal to the remaining principal plus accrued but unpaid interest through the payoff date of any such HTM Heater Capital Charge, or (y) the Fair Market Value thereof, calculated as described in clause it above in this subsection 6.08.e, whereupon, Seller shall convey to Eastman, at no additional cost, the Essential ISBL Facilities and Seller's HTM Heater Interests. At any time after the Initial Delivery Date, if Eastman elects to cease using a portion of the HTM Heater System and dispose of the components of such portion of the HTM Heater System, Eastman will have the right to repurchase Seller's HTM Heater Interest in such components upon paying Seller in cash or cash equivalent the greater of (xx) the portion of the HTM Heater Capital Charge attributable to such components, in an amount equal to the allocable portion of the remaining principal plus accrued but unpaid interest on such portion of principal through the payoff date, of any such portion of the HTM Heater Capital Charge, or (yy) the Fair Market Value thereof, calculated as described in clause ii above in this Section 6.08.e, whereupon Seller shall convey to Eastman, at no additional cost, Seller's HTM Heater Interest in and to such components of the HTM Heater System; provided, however, that Seller shall retain Seller's HTM Heater Interest in the remaining portion of the HTM Heater System still in use by Eastman.

The Parties hereby stipulate and agree that the Amended ESA remain in full force and effect in accordance with their terms, except as amended hereby.

EXECUTED in multiple counterpart originals as of the date first set forth above.

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EASTMAN CHEMICAL COMPANY

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Credit Suisse First Boston, acting through its New York Branch and as Administrative Agent on behalf of the Banks, hereby consents to the above amendment.

CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Administrative Agent on behalf of the Banks

Name: BRIAN T. CALDWE Title:

Name: Title:

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